



Space Development and Relevant Regulations of PRC

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Abstract:

On the basis of briefing the development of space technology and activity in China, this essay analysis the characteristics and main rules of the space regulations in China, and proposes how to advance and perfect the space law in China further. The beginning of space technology in China can be traced back to 1956. After more than fifty years development phased in three periods of technology preparation, technology experimentation and engineering application, the achievement of space technology and activity in China is noticeable in the world. But the space legislations in China, which is mainly composed as ministerial rules, orders, and regulatory documents, are really lagged far behind the space activity, and can not adapt to the quick and comprehensive development of space activity. Therefore, national space law must be passed in time.

Key Terms space technology space law international treaty

I Introduction

Many aspects of the space law in China are unclear and need to be clarified. The beginning of space technology in China can be traced back to 1956 when the Fifth

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Research Institute of the Ministry of National Defense was established. After more than fifty years development phased in three periods of technology preparation, technology experimentation and engineering application, the achievement of space technology and activity in China is noticeable in the world. Meanwhile, even in the academic circle, few people notice the space law regulations in China. What are the main characteristics of it? Are there any important regulations and what fields do they cover? Does it need any further development in the future? If it is, what are they? All these questions are to be answered in this article.

As a matter of fact, China's activities in the space law area are active. China joined several major international space treaties prepared by the United Nations, and took part in the activities of COPUOS²⁾ in 1980, established the Chinese Institute of Space Law in 1992 as an institutional member of the International Institute of Space Law from 2001. Several major universities including China University of Political Science and Law have attended the Manfred Lachs Space Law Moot Court Competition every year since 2003.

As for the field of national regulations on space law, it has been lagged greatly behind the quick development of the space activity. The regulations in this area are largely ministerial decrees and regulatory documents, which are at a very low level on the hierarchy of the legal system in China. So, it really needs to pass a national law as a frame work to regulate the accelerated space activities. For this purpose, we should analysis the characteristics of the current regulations and its main contents to propose some specific advices on the national space law in China suitable for the current situations and for the future.

This essay is composed of six parts. Par I is the introduction of the problems which outlines the structure of the essay. Part II is the brief introduction of the space development summarizing the main achievements and the development phases in 50 years and the developing goal in the future. Part III analysis the main characteristics and the status of space regulations in China referring to the legislation system and the hierarchy of it. Part IV studies the main contents of the two main space regulations in China comparing with the UN space treaties. Part V lists some legislation proposals useful in the future. Part VI is the conclusion with some reflections after concluding this essay.

2) United Nations Committee on the Peaceful Uses of Outer Space, established according to the UN resolution No.1472 1959.

II The Space Technology and Activities Development in China: Overview

The development of space technology and space law has always been high on the Chinese government agenda. China established the Fifth Research Institute³⁾ under the Ministry of National Defense on Oct. 8, 1956, a year earlier than the launch of the first manmade satellite,⁴⁾ which became the first institute responsible for the research and manufacture of missiles and rockets and built the first Launching Vehicles Site in April 1958. These events marked the beginning of space technology and space activities in China.

During the past decades, China has achieved an accelerating development in the fields such as Man-made Satellite, Launching Vehicle, Launching Site, Telemetry, Tracking and Command (TT&C) and Manned Spaceflight. In the field of space technology, China has gone through a development phased in three periods, namely technology preparation (1956-1970), technology experimentation (1971-1984) and engineering application (1985 till present).⁵⁾ At the end of the first period, China's first man-made satellite, the "Dongfanghong-I" was successfully developed and launched on April 24, 1970, making China the fifth country in the world with such capability. The major task of the second period is to research, launch and run the recoverable remote-sensing satellites, experimental telecommunications satellites, and scientific research and technological experimental satellites. ⁶⁾ In the third period, four satellite series in China have been initially developed altogether by 2000, namely, recoverable remote-sensing satellites, "DFH (Dongfanghong)" telecommunications and broadcasting satellites, "FY (Fengyun)" meteorological satellites and "SJ (Shijian)" scientific research and technological experiment satellites. In the following six years (2000-2006), two more series of satellites have been developed, which are the "ZY" (Ziyuan, or Resources) earth resource satellites, and "Beidou" (Plough) navigation and positioning satellites.

In addition, the oceanic satellite series will come into being soon.⁷⁾ As regards the

3) The first president of the Fifth Research Institute is a famous scientist QIAN Xuesen. See the official website of CNSA: <http://www.cnsa.gov.cn/n615708/n620172/n620649/66157.html>, last visited on May 1, 2008.

4) As we all know, the first manmade satellite, the "Sputnik" of former Soviet Union, was launched into space on Oct. 4, 1957.

5) ZONG He, "The Splendid Achievements of the Chinese Space Activity Development", in *Space International*, 2006, No. 9, p. 1.

6) *Ibid.*

7) See the Chinese Government White Paper-China's Space Activities 2006.

launching vehicle, China has independently developed the “Long-March” rocket group, containing 12 types of launching vehicles and successfully conducted dozens of launches. As for the launching site, China has set up three launching sites in Jiuquan, Xichang and Taiyua. In addition, an overall TT&C network has been established with the tracking and command techniques ranking among the world's most advanced countries. Advance studies and engineering work of the lunar-orbiting project has also been conducted in the deep-space exploration, making important progress. Of particular concern is the rapid growth in the manned spaceflight during the last decade. Actually, the Space Medicine Engineering Institute, where the selection of astronauts and manned space medical engineering research were conducted has been set up as early as April 1, 1968. ⁸⁾ Chinese manned spacecraft project can be traced back to 1992 with tremendous progress followed in the next decade or so. On October 15 and 16, 2003, it launched and retrieved the “Shenzhou V” manned spacecraft, China’s first of its kind. Having mastered the basic technologies for manned spacecraft, China became the third country in the world to develop manned spaceflight independently. From October 12 to 17, 2005, the “Shenzhou VI” manned spacecraft completed a five-day flight with two astronauts on board. There has been news that China will launch the “Shenzhou VII” manned spacecraft with three astronauts on board, one of which will carry out the space walk activities.⁹⁾

China is unflinching in taking the road of peaceful development, and always maintains that outer space is the common wealth of mankind. The aims of space activities, as the State expressed, are “to explore outer space, and enhance understanding of the Earth and the cosmos; to utilize outer space for peaceful purposes, promote human civilization and social progress, and benefit the whole of mankind; to meet the demands of economic construction, scientific and technological development, national security and social progress; and to raise the scientific quality of the Chinese people, protect China’ national interests and rights, and build up the comprehensive national strength.” ¹⁰⁾

8) See the official website of CNSA: <http://www.cnsa.gov.cn/n615708/n620172/n620649/66157.html>, last visited on May 1, 2008.

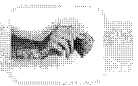
9) See the news in the China News Service which can be also found at the website: <http://www.chinanews.com.cn/gn/news/2008/03-06/1183901.shtml>, last visited on May 1, 2008.

10) See the Chinese Government White Paper 2006 - China's Space Activities, whose main content is in line with that of the 2000.

Along with the rapid development in space technology, China also participated actively in the international activities concerning the space issues and space law. In June 1980, China dispatched an observer delegation to the 23rd Meeting of UN COPUOS for the first time, which is the beginning of China's contact with the UN space organs. And in the same year China became one of the 53 member countries of the committee. Since then, China has participated in all the meetings of UN COPUOS and the annual meetings held by its sub-committees. Among the space law treaties prepared by the UN, China acceded to the 1967 Outer Space Treaty, the 1968 Rescue Agreement, 1972 Liability Convention and the 1975 Registration Convention.¹¹⁾

Apart from concerning the institution and its development of the international space law, various departments and agencies have enacted a series of regulations including administrative regulations, decrees and methods. Inconsistent with the rapid development of Chinese space technology, China is still lack of a space law at the national level, which has become the "bottle-neck" of the continual development of the system structure, the space technology and the relating activities.

III Characteristics of Space Regulations in China



The present governmental department in charge of the space activities now is China National Space Administration pertaining to the Commission of Science Technology and Industry for National Defense (COSTIND); and one of the main organizations engaged in the space activities is the China Space Science & Technology Group. As mentioned above, the space activities was originally under the Ministry of National Defense and later under the leadership of the Ministry of the Seventh Machinery Industry, Ministry of Space Industry, Ministry of Aviation and Space Industry, China Space Industry Corporation, and finally the China Space Science & Technology Group founded on July 1, 1999 after the approval of the State Council. The space activities in China have been long governed by the administrative decree system. As a result, the legislation on space law appeared not that urgent with the ministerial rules and documents being the main forms of regulation.

The status of these regulations in China's legislative system shall be decided according to the provisions of the legislation law.

11) See the Chinese Government White Paper 2000 - China's Space Activities; see also the GA Resolution 35/16; Report of the COPOUS 2007, A/62/20; and document of the UN COPOUS 2008, ST/SPACE/11/Rev.2/Add.1.

In accordance with the provisions of the Legislation Law of the People's Republic of China 2000, the Chinese legal system is made up of administrative regulations, local decrees, autonomous decrees, special decrees and rules, plus rules formulated by the State Council's ministries or the people's governments of provinces which are implemented with the limits of their competence.

Based on the hierarchy of laws and regulations and the legislative authority, the following prescriptions can be found:

Firstly, apart from the constitution, the law accounts for the dominant norm, the force of which is superior to that of administrative regulations, local decrees and rules. The National People's Congress and the Standing Committee of the National People's Congress exercise the state authority of legislation. Meanwhile, the power to interpret laws is vested in the Standing Committee of the National People's Congress.

Secondly, the force of administrative regulations is inferior to that of laws. The authority to enact administrative regulations, the main form of which is "Regulation", is vested in the State Council.

Thirdly, the local decrees, autonomous decrees, special decrees and rules shall operate within their respective limits of competence. Under the pretext of not contradicting the Constitution, laws and administrative regulations, the people's congresses and their standing committees of provinces, autonomous regions and municipalities directly under the Central Government may formulate local decrees in accordance with the specific conditions and actual needs of their respective administrative areas. The people's congresses of autonomous regions are entitled to formulate the autonomy decrees and special decrees according to the local national political, economic and culture characteristics.

Fourthly, within its limit of competence, the force of ministerial rules formulated by the State Council's ministries is inferior to that of the administrative regulations. In accordance with laws and the State Council's administrative regulations, decisions and decrees, the State Council's ministries, commissions, the People's Bank of China, the National Audit Office and the organs directly under the State Council with administrative functions may formulate the rules within the limits of competence of their own ministries. Matters on which ministerial rules are formulated shall be the matters for implementing laws or the State Council's administrative regulations, decisions and orders.

Fifthly, military regulations and rules belong to a special series of regulations. The Central Military Commission formulates military regulations in accordance with the Constitution and laws. The headquarters under the Central Military Commission,

different arms of services and military regions may formulate military rules within their limits of competence in accordance with laws and the Central Military Commission's military regulations, decrees and orders.

The provisions of the Legislation Law of the People's Republic of China apply to all legislative matters, of course, including space activities. The characteristics of the space regulations in China are as follows:

1. The binding force of the legal norms is at a low level. The provisions on space activities fall into neither the realm of laws nor that of administrative regulations, but belong to the rules formulated by the State Council's ministries, which are at the lowest level of the legislative hierarchy.

At present there are only two systematic prescriptions on space activities, namely the Administering Methods on Registration of Space Objects and the Provisional Administering Methods on the Permits for Civil Space Launch Projects, which all belong to the rules formulated by the State Council's ministries. Thus it is clear that in the field of space activities which has always been high on the Chinese government's agenda; it is still in short of the highest level laws in national legal system for regulating and governing. By sharp contrast, in some countries with a less developed space technology, the legislation on space activities is not that lagged behind. For instance, the Bengal promulgated the Bengal Law on the Space Research and Remote Sensing Research Institute in as early as 1991.

In China there are a few prescriptions at the level of administrative regulations, such as the Administering Regulation on the Ground Receiving Facilities of the Satellite Telecasting. Yet these regulations are more directly related to the mass media activities other than space activities.

2. It lacks of the fundamental law in the legal system concerning space activities with rules formulated by the State Council's ministries and regulatory documents as the main components.

As mentioned above, the space law regulations in China now is made up of rules formulated by the State Council's ministries and regulatory documents without a uniform space law or administrative regulation. Therefore, the systemic and unitary basic principles can not find its embodiment in law.

3. The rules are of multiple forms with complicated contents.

As the space activities are connected with different ministries and organs, each of which sets up rules according to its own conditions and needs in execution, a rule collection made up of a considerable amount documents interacting with each other in their abundant contents yet lacking in unity has formed. Among these rules, some involve the administration of the satellite signal reception and the satellite TV channels; some relate to the techniques and standards of aerospace products; some touch upon the setup and administration of organizations and enterprises, some concern matters such as education and taxation and so on. The advantages of such arrangement are realistic, expedient and adaptable to new conditions.

4. The rules are of different origins and need to be unified.

As different ministries all have the authority to formulate certain rules, the cumbersome collection of rules is difficult for staff from different organizations to comprehend and command as well as block the coordination and blur the rights, obligations and liabilities of different ministries and organizations, which is adverse to its future development. By Dec., 2007, the COSTIND have carried out a clear-up regarding the laws, administrative regulations, rules formulated by the State Council's ministries and regulatory documents within its competence including rules on space activities during which process 55 administrative regulations, 22 rules formulated by the State Council's ministries and 181 regulatory documents have been examined (26 of them contain confidential items).¹²⁾

In a pursuit to solve the abovementioned problems and push forward the development of space course, it is the urgent to lay down fundamental rules for the space activities. The good news is the space law being drafting out now is expected to resolve these problems.

12) See the 2007 document of the COSTIND "Notice on Clearing-up Administrative Regulations and Rules", "Notice on the Work of Clearing-up Regulatory Documents", "Summarization on the Clearing-up of the Administrative Regulations, Administrative Rules and Regulatory Documents", etc. After examination, COSTIND suggest to revoke 1 administrative regulation, modify 12 administrative regulations, uphold 21 rules, revoke 1 rule and modify 3 rules. After overall checking, it has found that there are 181 regulatory documents during 1998 to 2006, and 16 of which has been revoked, 6 of which are to be revoked according the suggestion of COSTIND, 4 of which was invalidated, 3 of which are to be invalidated.

IV Main Contents of the Two Main Space Rules in China Comparing with the UN Space Treaties

Among the major provisions of space law, two ministerial rules are directly relating to space activities, which are the Administering Methods on Registration of Space Objects and the Provisional Administering Methods on the Permits for Civil Space Launch Projects. The main contents are as follows:

1. The Administering Methods on Registration of Space Objects

The methods are formulated by the COSTIND, which were promulgated on Feb. 8, 2001 by the No. 6 Decree and entered into force thereafter. It is made up of 16 articles which prescribed the definition for space objects and launching state, the obligor of registration, and the procedures, time limits and contents in national and international registrations. The main provisions are as follows:

- Firstly, it provides the definition of space objects.

According to the methods, space objects refer to the manmade earth satellites, manned spacecraft, space probes, space station, launching vehicles and their components and other manmade objects which enter the outer space.¹³⁾

This definition adopts the incomplete listing manner. There are two conditions for an object to be a space object: firstly, the object enters the outer space; secondly, the object itself belongs to the category of manmade object. Yet plenty of objects meet these two conditions. In order to avoid putting all these objects into the category of space objects, the methods exclude two types of them, which are the high altitude detecting rockets and the ballistic missiles passing the outer space swiftly.

This definition does not contravene with relevant provisions in the UN treaties. For instance, the term “space object” in the Registration Convention (hereafter referred to as “the Convention”) includes the components of the space object, the launching vehicle and its parts. The convention prescribes the scope other than the definition of the space object. From the abovementioned provisions, the space object itself and its launching vehicle are all included in the connotation of space object. Yet the difference between the two is that the Chinese rules define the space objects as manmade objects more clearly and distinguish the objects temporarily passing the outer space from other space objects from purpose other than effect.

13) See the Administering Methods on Registration of Space Objects, Art. 2.

- Secondly, it provides a definition on launching state.

The definition in the methods is in line with the Convention which refers to the countries who launch or procure launching a space object, or from whose territory or facility a space object is launched. All the space objects launched in China or launched abroad with China being a joint launching state shall be registered according to the methods.¹⁴⁾

- Thirdly, it lays down the obligor of registration.

Overall speaking, all the governmental departments, corporations, other organizations and individuals who launch or procure the launching shall perform their registration obligations.¹⁵⁾ To be specific, the obligor in China is the owner of the space object. When there are more than one owner, the principal owner should register on behalf of all.¹⁶⁾ When China is undertaking international commercial launching services with the governments of other countries, corporations other organizations and individuals being the owner, the international launching services provider should perform the registration obligation.¹⁷⁾

- Fourthly, it formulates the competent authority, the content and the time limit of the space objects registration within China.

The COSTIND is in charge of the administration of registration affairs within China. When other joint launching states are involved, the COSTIND and the Foreign Affairs Ministry shall identify the obligor jointly if it is necessary.¹⁸⁾

The state establishes and keeps the national register for space objects, and it is kept by the COSTIND.¹⁹⁾ The contents of registration include the registration number, the registrant, the owner, name, basic characteristics and the launcher of the space object, name of the launching vehicle, date of launch, name of the launching site, basic orbital parameters of the space object and the launch of the space object in orbit, etc.

Within the time limit of 60 days from the time when the space object enters the outer space orbit, the obligor shall register.²⁰⁾ The time limit for the change

14) Ibid, Art. 3.

15) Ibid, Art. 4.

16) Ibid, Art. 7.

17) Ibid, Art. 8.

18) Ibid, Art. 5.

19) Ibid, Art. 11.

registration is also 60 days after changes such as changes in orbit, disintegration, stop working, return from and re-entry into the atmosphere. ²¹⁾

- Fifthly, it stipulates the procedures of international registration for space objects.

In 60 days of the domestic registration, the COSTIND shall register at the United Nations Secretariat through the Foreign Affairs Ministry to fulfill its obligations under the Convention, ²²⁾ the content of which is in accordance with the Convention. In the case that China is a joint launching state, the Foreign Affairs Ministry shall identify the registrant together with concerning countries in accordance with the provisions of the Convention.

From the above provisions, the rules of the methods are in line with that of the Convention, but more specific and concrete in matters such as the registrant, content and time limit of registration. Meanwhile, the methods also deal with the Convention and the competence of the COSTIND and the Foreign Affairs Ministry in registration.

The deficiency of the methods is that there are no provisions concerning the liability and consequence of the non-registration or incomplete registration. When more and more space objects will be launched in the future, especially when sometimes corporations or other organizations from China choose to launch space objects abroad, such provisions are of even more necessity.

2. Provisional Administering Methods on the Permits for Civil Space Launch Projects

The provisional methods are also formulated by the COSTIND, which were promulgated on Dec. 21, 2002 by the No. 12 Decree and entered into force a month later. It is made up of 28 articles in five chapters with its contents touching on procedures of application, examination and approval, supervision and administration and legal liabilities. The main provisions are as follows:

- Firstly, it clarifies some significant terms.

Civil space launch projects mentioned in the present methods shall refer to the entry of such spacecrafts as satellites inside the territory of China into the outer

20) Ibid, Art. 6.

21) Ibid, Art. 9.

22) Ibid, Art. 12.

space not for military purpose, and the entry of such spacecrafts as satellites, etc. over which the natural persons, legal persons or other organizations of the People's Republic of China have had property or have property by means of on-orbit delivery into the outer space from outside of the territory of China. ²³⁾

- Secondly, it lays down the basic administering institution. ²⁴⁾

The administering institution of permit shall apply to the civil space launch projects. Any natural person, legal person or other organization undertaking civil space launch projects shall, in accordance with the present methods, apply for examination and approval, and shall not carry out the civil space launch projects until he/it is found to be qualified upon examination and has obtained for the permit for civil space launch projects (hereinafter referred to as the permit) .

The COSTIND shall be responsible for examining, approving and supervising civil space launch projects (hereinafter referred to as projects) .

- Thirdly, it prescribed the conditions of the applicant for permit. ²⁵⁾

The general project contractor shall be the applicant for the permit. Where there is no a domestic general project contractor, the final owner of the satellite or other spacecraft shall be the applicant for the permit.

Apart from abiding by the laws and regulations of the state, maintaining the state secrets, neither endangering the state security nor damaging the benefits of the state, the applicant for the permit shall also meet the following conditions:

- ① Relevant permission documents. He/it shall have the relevant permission documents for carrying out the project under application, which are issued by the relevant departments of the state;
- ② Corresponding strength. He/it shall have the technical strength, economic strength and complete technical documents for carrying out the project under application;
- ③ Due diligence. The project under application shall not cause irrecoverable injury or damage to the public health, security and property out of gross negligence or intentional act; and shall be conform to conditions provided for in laws and regulations.

23) See the Provisional Administering Methods on the Permits for Civil Space Launch Projects, Art. 2.

24) Ibid, Art. 3 - 4.

25) Ibid, Art. 5.

- Fourthly, it stipulates the procedures, time limits and relief measures of the application and approval. ²⁶⁾

The applicant shall, 9 months before the prearranged month for the launch of the project, submit the relating documents to the COSTIND to apply. ²⁷⁾ The COSTIND shall, within 30 days as of receipt of the application documents, organize the examination of the project under application. There are two kinds of results, (1) permit issuance for the qualification of examination; or (2) no permit issuance for fail of examination, notifying the applicant and the relevant departments in writing. ²⁸⁾

Two kinds of remedies can be applied when the applicant has any objection to the conclusion from examination: (1) applying to the COSTIND for re-examination, (2) applying the administrative review in accordance with the law. ²⁹⁾

- Fifthly, it stipulates the supervision and administration system. ³⁰⁾

(1) Permit system.

A legally obtained permit shall not be altered or transferred; the permit shall only be limited to the purpose for an approved project, and shall, after the ending of the project, be automatically invalidated. Where any content in a permit needs to be modified, the permit holder shall, 90 days before the expiry of the validity period of the permit, file an application for modification to the COSTIND. If the project is to be cancelled according to plan, the permit holder shall apply for the cancellation in order to write off it. If the permit holder can not complete the project due to mal-management, the COSTIND writes off the project permit.³¹⁾

If the permit holder violates the national laws, regulations, international conventions, or inter-state confidential agreements, or endangers the state security, or acts beyond the scope of the permit, the COSTIND shall have the power to order it to get right within a time limit, or revoke the permit in case of severity.³²⁾

26) Ibid, see the contents in Chapter II.

27) Ibid, Art. 6.

28) Ibid, Art. 7.

29) Ibid, Art. 8.

30) Ibid, see the contents in Chapter III.

31) Ibid, Art. 11 - 15.

32) Ibid, Art. 16.

(2) Insurance obligation.

The permit holder must comply with the relevant provisions of the state to purchase the third party liability insurance and other relevant insurances for launching a space object. ³³⁾

(3) Reporting and filing application.

For a project in the stage of a domestic executive launching site, the permit holder shall, 6 months before the prearranged month for launch, reports the launching plan of the project to the COSTIND. For a project in the stage of a foreign executive launching site, the permit holder shall, 60 days before the prearranged day for launch, file an application to the COSTIND for approval of the project to leave the factory. ³⁴⁾

• Sixthly, it provides the legal responsibilities.

Acts violating the regulations may cause ordering to cease the illegal activity, administrative sanction, administrative penalty or criminal responsibility.

(1) Administrative Sanctions

An approving institution or any of its functionaries who neglects its/his duties or abuses its/his powers during the examination and approval of the permits, thus causing loses to the state, shall be imposed upon administrative sanctions. ³⁵⁾

(2) Ceasing the illegal Activities and Administrative Penalties ³⁶⁾

A permit holder who conceals the truth, practices frauds or damages the benefits of the state during application or carryout shall be imposed upon administrative penalties in accordance with the law.

Any natural person, legal person or other organization without the permit who undertakes projects unauthorized shall be ordered by the COSTIND to cease the illegal activities, and the parties involved shall be imposed upon administrative penalties in accordance with the law.

(3) Criminal Liabilities ³⁷⁾

In case of any of the abovementioned actions constituting a crime, the subject of the action shall bear criminal responsibility in accordance with the law.

33) Ibid, Art. 19

34) Ibid, Art. 20 - 21.

35) Ibid, Art. 26.

36) Ibid, Art. 24 - 25.

37) Ibid, see the contents in Chapter IV.

V Legislative proposals



As mentioned above, a series of problems have come into beings because of the absence of space law at the national level. Existing ministerial rules directly relating to the space activities are rare and the fields involved are quite limited. Besides, the following questions need to be resolved without delay: firstly, an increasing number of companies and other organizations have shown great interest in space activities, but they are not quite clear about how to participate in and carry out relevant activities and make a profit. Secondly, there are no express legal provisions about the administration of astronauts and the activity realm of retired astronauts. As a result, it is high time for National People's Congress to enact a space law to improve the domestic space law system. The author believes that the following principles should be followed:

1. Compliance with international law, especially the international space law

International law is the law for the international community. As a member of the international community, China has been upholding and advocating the point that the international law should be observed in space activities. Specifically, the following regulations should be considered to be integrated into the legislation of the national space law in China:

(1) International treaties

Binding on the contracting states, the provisions of the international treaties impose the international obligations to the contracting states. Among the treaties, the United Nations Charter is the most important one. UN Charter obligations are of the most significant importance and must be complied with. According to relevant provision of the UN Charter, its obligations shall prevail if there is a conflict between the obligations under other treaties and that of the UN Charter.³⁸⁾ The next to be observed is space law treaties prepared by the United Nations. As a contracting state, the effective international treaty is bonding on China. And the last is the relevant treaty concluded by China and other countries or international organizations.

It is not stereotyped in integration of international treaties. Instead, it can be

38) See Art. 103 of the UN Charter: "In the event of a conflict between the obligations of the members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail."

conducted according to China's actual situation. It is even allowed that some provisions are not the same with international law as long as the international obligation is not breached. In this regard, precedents exist in China. For example, on diplomatic privileges and immunities and consular privileges and immunities, two regulations enacted in China are inconsistent with the provisions in Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations which China has acceded to.³⁹⁾

(2) International Custom

International custom in the field of space law is not the major component, considering the establishment of international space law treaty system based on the rapid development of space technology. As a matter of fact, main principles and rules embodied in current international space law treaties have been generally accepted by the international community. Some principles and rules embodied in United Nations General Assembly Resolution, although not binding, to a certain extent reflect the unanimous view of international community on relevant issues and can be used as a kind of evidence to prove the existence of international custom.

The provisions of the current international customs should be explored and integrated into the national space law in China.

2. Reference to the legislative experience of other countries

By other's fault, wise men correct their own. China's development of legal system in the past decades has absorbed the civil law system and common law system experience. Undoubtedly, it is quite necessary to investigate the existing legislative experience in other countries and draw on certain means and contents suitable for China.

As above mentioned, the model of legislation in the U.S. and Russia has their own merits. As early as 1958, the U.S. has enacted a domestic law in area of space law and is a leader in this area. The experience is worth drawing on that formulating laws and regulations quickly in response to the development of forefront of the field.

39) See the 1986 Regulations on Diplomatic Privileges and Immunities of the People's Republic of China and the 1990 Regulations on Consular Privileges and Immunities of the People's Republic of China. The privileges and immunities conferred on the foreign embassies and consulates in China are more than that of the 1961 Vienna Convention on Diplomatic Privileges and Immunities and of the 1963 Vienna Convention On Consular Relations, to both of which China is signatory.

40) The former Soviet Union, Russia's predecessor is the first to launch satellites and implement a manned aviation successfully. And its legislative system is quite unique. Since China has long been affected by former Soviet Union's legal system, it can be much easier to draw on the experience. In particular, close attention should be paid to the fact that Russia's law has undergone substantial changes since 1990s. For example, the establishment of the Russian Space Fund and the model of multi-channel access to capital sources are quite positive. 41)

Of course, the experiences in other developed countries, such as the U.K. and France and developing countries, such as Brazil should also be absorbed.

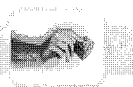
3. Integration and codification of the existing regulations and other regulatory documents

Although there is no unified space law in China, thanks to accumulation of longtime practical experience, a wide range of ministerial rules and other regulatory documents with rich contents exist. These documents should be integrated into the new law according to future development trends and needs. As a result, the new law, quite scientific and logical, can take the factual situation into consideration, and better promote the development of space enterprise.

4. Note to development trends

Because of rapid development of space technology, new legal issues have emerged and the demand of states and even general public for space activities shows the characteristics of diversification. Due considerations and in-depth study should be paid to the issues and trends in order to formulate in the legislation. By doing so, China's space legislation is kind of forward-looking, avoiding the instability caused by frequent modification. For example, space station issues, commercialization of space activities and so on should be taken into consideration.

VI Conclusion



China's space technology and activity originated in 1956 and great achievements have been made after development of over fifty years. However, the national space

40) See National Aeronautics and Space Act of 1958.

41) See the 1993 Russian Federal Space Activities Act, Article 13.

law is relatively lagging, and many aspects need to be regulated and developed. In particular, the situation should be changed that no unified space activity law exists. After United Nations had basically completed international space law treaty system in 1970s, China also positively participated in those important treaties and other relevant activities, and referred to relevant treaties in relevant ministerial rules. However, unified and comprehensive space legislation system does not exist till now. Therefore, the following can be inferred.

1. The development of space technology and activity may not be synchronized with legislation, although many cases are so.

In the eye of international law, the period of rapid development of international space law is slightly delayed than that of space activity. The first significant space treaty did not come into being until ten years after the first man-made satellite had been launched; the emergence of the Moon Agreement were twenty two years after that. Then important treaties have been basically stabilized, and no new treaty emerges up to now. China's performance in this process is that development of acceding international treaties is faster than that of making national law. China joined the space treaty about thirteen years after her first man-made satellite was launched, and in the following five years, simultaneously joined Rescue Agreement, Registration Convention and Liability Convention.⁴²⁾ However, we cannot deny the fact that domestic legislation is relatively lagging behind the pace, because there is no regulation up to now. Although access to international treaty can make up for the lack of domestic legal provisions in the legal system, they cannot satisfy the needs of space activity development in many aspects.

2. The effect and executive power of regulatory documents are more specific, and regulatory documents exert two-side effect on legislation.

Although no unified law exists, achievement is huge and effect is remarkable considering the developments of space technology and activity in China in past over fifty years. Leaving aside other factors and only in terms of regulation, the provisions in ministerial rules and other regulatory documents are very specific, making it much easier to implement and solve relevant practical issues. Thus, the urgency of

42) In Dec., 1988, after the approval of the Standing Committee of NPC, China acceded to these three treaties.

formulating a unified law has greatly been reduced. Seen from the current situations, regulatory documents are in various forms with usual names as regulation, method, decision, opinion, detailed rules, procedures, criterion, notice, and so on. The existence of the documents serves as important reference for future reunification of legislation.

3. Legislation still has a long way to go. Multiple departments need to participate and further efforts need to be made to coordinate and balance powers and liabilities. It seems not realistic to promulgate national law in a short period of time (within five years).

After entering the 21st century, legislative space activities have not been rapidly developed only except two ministerial rules directly related to space activities. There is no great progress in space legislation even after the break of China's first manned space flight in 2003. Although the ministries concerned are drafting space legislation bill, considering the complexity of the problem and need for further research, domestic space legislation is not included in the 2008 legislative agenda of the National People's Congress. The 5-year legislative agenda of the 11th National People's Congress is under preparation now. There is still much effort to be made to put the space law draft on the agenda. This means there is no likelihood to pass a national space law in the following five years if it does not appear on the agenda.

Sooner or later, legislation on space law would come into existence. To the author, the main concerns of this law should include the convergence of international space treaties' prime, the reference of the advanced legislation abroad, the prediction and regulation towards new problems which might appear in the future and the practical coordination on the competence between different departments and organs concerned.

Annex: the Space Objects China Launched and Functioned

表 中国发射并运行成功的自制航天器一览表⁴³⁾

序号	航天器名称或类型	发射时间	序号	航天器名称或类型	发射时间
1	东方红-1卫星	1970-04-24	37' 38	风云-1c极轨气象卫星' 实践-5卫星	1999-05-10
2	实践-1卫星	1971-03-03	39	资源-1卫星的01星	1999-10-14
3	技术试验卫星	1975-07-26	40	神舟-1试验飞船	1999-11-20
4	返回式卫星	1975-11-26	41	中星-22卫星	2000-01-26
5	技术试验卫星	1975-12-16	42	风云-2b静止气象卫星	2000-06-25
6	技术试验卫星	1976-08-30	43	资源-2卫星的01星	2000-09-01
7	返回式卫星	1976-12-07	44	北斗导航卫星-1的01星	2000-10-31
8	返回式卫星	1978-01-26	45	北斗导航卫星-1的02星	2000-12-21
9~11	实践-2' 2a' 2b卫星	1981-09-20	46	神舟-2试验飞船	2001-01-10
12	返回式卫星	1982-09-09	47	神舟-3试验飞船	2002-03-25
13	返回式卫星	1983-08-19	48' 49	海洋-1a海洋卫星' 风云-1d极轨气象卫星	2002-05-15
14	东方红-2试验通信卫星	1984-04-08	50	资源-2卫星的02星	2002-10-27
15	返回式卫星	1984-09-12	51	神舟-4试验飞船	2002-12-30
16	返回式卫星	1985-10-21	52	北斗导航卫星-1的03星	2003-05-25
17	东方红-2实用通信卫星	1986-02-01	53	神舟-5载人飞船	2003-10-15
18	返回式卫星	1986-10-06	54' 55	资源-1卫星的02星' 创新-1卫星	2003-10-21
19	返回式卫星	1987-08-05	56	最新型返回式卫星	2003-11-03
20	返回式卫星	1987-09-09	57	中星-20卫星	2003-11-15
21	东方红-2a通信卫星	1988-03-07	58	探测-1卫星	2003-12-30
22	返回式卫星	1988-08-05	59' 60	试验卫星-1' 纳星-1卫星	2004-04-8
23	风云-1a极轨气象卫星	1988-09-07	61	探测-2卫星	2004-07-25
24	东方红-2a通信卫星	1988-12-22	62	最新型返回式卫星	2004-08-29
25	东方红-2a通信卫星	1990-02-04	63' 64	实践-6a' 6b卫星	2004-09-09
26~28	风云-1b极轨气象卫星' 大气-1' 2卫星	1990-09-03	65	最新型返回式卫星	2004-09-27
29	返回式卫星	1990-10-05	66	风云-2c静止气象卫星	2004-10-19
30	新型返回式卫星	1992-08-09	67	资源-2卫星的03星	2004-11-06
31	返回式卫星	1992-10-06	68	试验卫星-2卫星	2004-11-18
32	实践-4卫星	1994-02-08	69	实践-7卫星	2005-07-06
33	新型返回式卫星	1994-07-03	70	最新型返回式卫星	2005-08-02
34	新型返回式卫星	1996-10-20	71	最新型返回式卫星	2005-08-29
35	东方红-3通信广播卫星	1997-05-12	72	神舟-6载人飞船	2005-10-12
36	风云-2a静止气象卫星	1997-06-10	73	遥感卫星-1卫星	2006-04-27

43) ZONG He, "The Splendid Achievements of the Chinese Space Activity Development", in *Space International*, 2006, No. 9, pp. 1-3.

Curriculum Vitae

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Prof. Li published about 15 books on international law and international economic law. The book titled Introduction of Space Law (associate chief-editor) published in 2007 is the textbook used for astronauts training in China. Other main books Prof. Li published including the WTO Dispute Settlement Mechanism (author), International Law (associate chief-editor), International Law Commentary, Introduction of E-commerce Law, etc.

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